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## FEDERAL CONTROL OF INTERSTATE COMMERCE

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The Republican administration, voicing the demand of the American people, has determined to give to the federal government power to regulate and control corporations engaged in interstate commerce. The various plans presented and the bills introduced at the last session of Congress have been criticised so severely by students of economics that the first lesson in remedial legislation is being learned,—the lesson of what not to do. So clearly have the defects of the proposed remedies been shown, that a straight and narrow pathway is appearing which will lead, unless blocked by political or other influences, to the passage of a law which will preserve the good features and at the same time eliminate the evils now existing in corporations engaged in interstate trade.

The bidding of the states for the chartering of corporations has created a body of laws which confer great powers—powers our forefathers never dreamed would be given to any group of individuals—to those who are willing to pay a small incorporation tax in exchange for such privileges. So little supervision and control are now exercised by the state governments that corporations are able, through the secrecy which surrounds their actions, to override the law and to some extent to be creatures subject only to the wishes and desires of the corporate managers. The futility of state control has become so apparent that, much against their wishes, our people are compelled to turn for protection to the federal government.

The constitution of the United States, by the third clause of Article I, Section VIII, has reserved to Congress the power “to regulate commerce with foreign nations and among the several states,” and has thereby vested in Congress the power to enact laws which will adequately control and regulate the agencies engaged in interstate trade. So well convinced are the authorities at Wash-

ington that Congress possesses such power, that Commissioner Garfield, of the Bureau of Corporations, in his first report, has said, that "It may be considered as established" that under these constitutional powers Congress may:

(1) Create corporations as a means of regulating interstate commerce.

(2) Give to such corporations the power to engage in interstate or foreign commerce.

(3) Prohibit any other corporations or individuals from engaging in the same.

(4) As a condition precedent to the grant of such corporate powers, lay any restrictions it chooses upon the organization's conduct or management of such corporation.

(5) Tax interstate commerce at will and the instrumentalities and corporations engaged therein.

(6) Provide regulations for the carrying on of interstate commerce generally and in such local affairs as are now left to the states in the "silence of Congress" under the principle established in *Cooley vs. Port Wardens* (12 How. 299), and in the carrying out of such powers it may use any or all means "which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution."

Congress having the power to act and the administration having determined that such power shall be used to the curbing of corporate greed and corporate discrimination, it becomes the duty of every American to give his best thought to the consideration of the plans suggested in order that the combined wisdom of the American people may be brought to bear on the preparation of a federal incorporation act. To such an end the following plan is presented as a contribution to this discussion:

*First.* The power and authority of the Bureau of Corporations in the Department of Commerce and Labor should be enlarged so as to include the right to grant charters of incorporation to all who seek to engage in interstate or foreign commerce. This bureau should not only have this power, but all corporations, joint stock companies and other forms of organizations now existing or which hereinafter may be chartered by a state government, should be prohibited from engaging in interstate and foreign commerce until chartered by this bureau. Unless this bureau has the sole right to

incorporate associations engaged in interstate or foreign commerce, the effect of this plan would be defeated. Sub-companies would be organized in the different states, with or without the intervention of a holding company, and would not be subject to the control and regulation of this bureau.

This bureau should have not only the sole right to incorporate associations engaged in interstate and foreign commerce, but it should have absolute charge and complete control of its corporate children.

*Second.* Every corporation incorporated by this bureau should pay an organization tax of one-tenth of one per cent. upon the amount of capital stock authorized, and a like tax upon any subsequent issue.

The average organization tax in the various states is about one-tenth of one per cent. Experience has shown that this is the rate which incorporators are willing to pay for the privilege of owning a corporate charter and the amount that should be charged for giving such privilege.

The incorporation tax should be so low as to deter no group of men from carrying on business in a corporate capacity; for it is to corporations, with their large aggregation of capital, that we must look for the development of our country. Corporations, when backed by large capital, expert skill and great business ability, have often conferred material benefit on the community at large, and almost invariably insured the promotion of prosperity on a durable basis. They have furnished the people with many of the commodities of civilized existence at much lower prices than formerly, not only without decreasing the wages of labor, but in many instances increasing them, and eventually extending the field for a larger number of employees. India rubber goods, tobacco, leather and a great variety of other commodities are cheaper than at any former period of our country's existence; and wages are higher to-day than they have ever been, except in war times. Without corporations the great railway systems of our country could not have obtained the capital required to cover our land with a network of rails and could not carry freight and passengers at the low rates charged to-day.

Without corporations our manufacturers could not compete with the corporations of England, France and Germany in the race

for the Asiatic and the South American markets. To extend our markets, and thereby provide an outlet for our surplus products, and thus give constant employment to our workers and toilers, is the crying necessity of our economic life; and, in order to obtain these markets, giant corporations must be met and conquered by more powerful and far greater aggregations of capital, organized in the form of corporations.

*Third.* The stockholders and directors of corporations organized under the Corporation Bureau should be personally liable only to the following extent:

The stockholders should be personally liable,—

(a) To creditors, to an amount equal to the amount unpaid on the stock held by each stockholder.

(b) To the laborers, servants and employees other than contractors, for services performed by them for such corporation.

The directors should be personally liable,—

(a) For declaring dividends from any fund other than from the surplus profits arising from the business of the corporation.

(b) For loaning corporation money to any stockholder, or consenting to the corporation discounting any note or other evidence of debt.

(c) For violating any of the provisions of this act or any law of the United States.

The liability of stockholders and directors of corporations, except for violations of law or breach of trust, should be so limited as to deter no one from contributing his money to corporate enterprises. The provisions of this plan provide sufficient protection to creditors and to the general public, and no additional burdens to those hereinbefore set forth need be placed on corporate stockholders and corporate directors.

*Fourth.* The real and tangible personal property owned by corporations chartered by this bureau should be locally assessed and taxed in the civic divisions of the states in which the property is located, the same as the real and personal property owned by individuals. No higher or different rate of taxation and no other or different method of assessment should be applied to such corporations than is applied to corporations organized under the state law or to individual citizens.

The reason for such local taxation is twofold: First, the local

authorities have a better knowledge of the value of property and better facilities for obtaining this knowledge, and would, therefore, make fewer mistakes, than a board of examiners appointed from Washington and not residents of the locality where such property is located; secondly, the cities and counties of the states depend largely for their support upon the taxes levied upon the property of corporations located within their jurisdiction, and to withdraw this revenue would cause confusion and would increase the burdens of the local taxpayers.

*Fifth.* Every prospectus or advertisement issued or published with a view of obtaining subscriptions for shares or for bonds of a corporation, organized or to be organized by this bureau, should give full details as to its organization; the contracts into which the promoters or organizers have entered; the earnings for the two previous years of all underlying corporations; the amount of money to be used for preliminary expenses and the amount to be reserved for working capital; and all information necessary for safe and intelligent investment. For a false statement, or the issuing of a prospectus which does not make a full disclosure of the corporate affairs, the promoters and their associates, the officers and their agents, should be legally liable, both civilly and criminally.

This knowledge is at present inaccessible. The investor who puts money into a giant corporation must guess as best he can what property he is getting, and the guess is often a bad one for him. The making public of the above-mentioned facts will remove the gravest evils from stock-watering. If the investor knows that there is only one dollar of property back of every three dollars of stock and bonds, which is the case with so many corporations whose shares are listed at the exchanges to-day, he can buy the securities at a discount sufficient to make his investment safe.

When appeals are made to the public to subscribe to the capital of undertakings, it should be made obligatory on the corporate promoters, organizers and officers to disclose every fact known to them and unknown to the public, in order that everything be open and above board, and the parties, public and promoters alike, may deal with equal information in regard to the organization and the conduct of such companies.

Corporations now in existence and engaged in interstate or foreign trade, and desiring to obtain a charter from this bureau,

should furnish to the commissioner a detailed history of its organization and an itemized list of its assets and liabilities, a summary statement of which should be published in such newspapers as may be designated by the commissioner. By the possession of this report the bureau will be placed in the position by which it could investigate intelligently the affairs of the corporation and be able rightly to supervise its future corporate life.

*Sixth.* Every corporation should annually, during the month of January, make and file with the corporation department a statement as of the first day of January, verified by the oath of its president or vice-president and its secretary or treasurer, fully setting forth the following information:

(1) The name of the corporation and the place and date of its incorporation.

(2) The names, residence, and business or occupation of the officers and directors of the corporation.

(3) The business in which the corporation is actually engaged, and the states, territories, districts, or insular possessions in which it is engaged in transacting such business, specifying a person residing in each such state and territory, who shall be designated by such corporation as its legal representative upon whom service of any legal process or notice issuing out of any court or of the corporation department may be made.

(4) The cash value of the assets of the corporation and the nature and character of such assets.

(5) The amount of indebtedness of the corporation, and, if such indebtedness is secured, in what manner.

(6) A statement in detail of all bonds and mortgages issued by and outstanding against said corporation, showing when said bonds were issued, when the same become due, and the consideration received by the corporation for said bonds in property or money, and, if in property, the nature, situation and cash value of such property; and in case of mortgages, a statement showing the date of such mortgages, the date of their maturity, the property covered thereby, and the cash value thereof.

(7) The amount of shares of stock or bonds owned or controlled by said corporation in any other corporation, and the proportion of the entire capital stock which such holding represents, both in the reporting corporation and the corporation whose shares it holds.

(8) The amount of assets and liabilities of any corporation in which such reporting corporation holds stock or bonds, giving the character of such assets and liabilities and of what such assets and liabilities consist.

(9) The number of shares of the capital stock of the corporation which have been actually issued, and the amount and value of the consideration actually received into the treasury of the corporation for such shares; where the payment was made in money, then the amount in money per share; where such payment was made in property, a description of such property as to location, character, and the cash value thereof.

(10) That it is not a party to any contract or agreement for the purpose of, or which operates as, a restraint of trade or commerce, or which results in giving to either corporation a monopoly of trade in any article of common use or utility, or which results in any business or commercial advantage over other corporations or persons engaged in like trade, business, or commerce, by virtue of such agreement or contract. That it is not a party to any pooling plan, agreement, or contract with any other corporation for any purpose which, when carried into effect, would create a monopoly of the trade or business in which such corporation or corporations is engaged, or in any degree lessen or destroy competition between corporations or between corporations and natural persons engaged in business, trade, or commerce of a similar character.

(11) That no part of the capital stock of the corporation is owned, controlled, or voted by any other corporation, or by the officers of any other corporation.

(12) That the corporation does not have or receive any rebate, deduction, discrimination, drawback, preference, or advantage in rates of transportation or anything incident to such transportation from any common carrier—railroad, pipe line, water carriers or other transportation company—by which its products are or may be transported, which give to it any advantage or profit directly or indirectly as against any other person or corporation who ships or desires to ship products of a similar character over such transportation lines under like conditions; or if any such have been received or given, then such corporation shall state when, from whom, on what account, and in what manner it was received, making a detailed exposition of the entire transaction.



(13) If a corporation is a railroad or transportation company, or a common carrier of any kind, that during the past year it has not granted to any person or persons, corporation, or company any special rates, discriminations, advantages, or preferences whatsoever, neither has it received any such.

That if at any time a corporation, organized under the federal government shall fail to file its annual report as herein provided, or shall fail to give the information required, its officers should jointly and severally be personally liable to the United States in the sum of one thousand dollars per day for every day it transacts business; and if any such report shall contain a false statement, the officers making such false statement should be subject to a fine or imprisonment, or both.

The object of compelling the making and filing of this annual report is to put on record under oath two of the officers of the corporation in order that the department may have an additional hold on the responsible heads of the corporation for violation of law. The annual examination hereinafter provided will enable the department to verify the correctness of the report and thus ensure the truthfulness of the statements contained therein.

*Seventh.* The commissioner or head of this bureau, through his staff of examiners, should examine annually into the affairs of all corporations chartered by his department, inspecting their books, agreements, receipts, expenditures, vouchers, records of meetings of directors and of stockholders, and report the condition of their affairs as of the first of January of each year. Power should be given to compel the attendance of witnesses to be examined under oath, to call experts to testify as to values, and to require the production of all books, papers, contracts, agreements and documents relating to any subject under investigation, no matter in whose possession or in what part of the United States or of its dependencies such documents may be. The claim that any such testimony or evidence may tend to criminate the person giving such evidence or testimony should be met by a provision that any such evidence or testimony should not be used against such person on the trial of any criminal proceeding. But no person so testifying should be exempt from prosecution and punishment for perjury committed in so testifying. And if it should be found that a corporation is over-capitalized, or is violating any anti-trust or other law, the commis-

sioner of the corporation bureau, after giving to the corporation sixty days' written notice to comply with the laws, should place the evidence in the hands of the Attorney-General, who should immediately commence an action to annul its charter.

The commissioner should also have the power to compel corporations to furnish, from time to time, such statements in regard to the conduct of the corporate business, the change of stock interests, the financial condition of the company, and such other data as may, in his judgment, be necessary to a complete understanding of the business and the condition of the corporation.

A detailed report of the examination of the property, business, profits, and losses of every corporation chartered by this bureau, should be made each year and kept on file in the office of the commissioner. A summary statement of the corporate assets and liabilities, the amount of stock issued and the amount paid thereon, in cash and otherwise, the actual amount of surplus, and the nature and mode in which it is used and invested, should be published in a government paper, designated for that purpose, and in one newspaper published in the county where the principal place of business of such corporation is located. The publication of such facts would in no wise injure the corporation, while the publication of a detailed report might paralyze or destroy the business done by corporations. It is well known that a corporation, just as a partnership or an individual in business, in some years makes money, in some loses money, and in others comes out even, but in the average comes out ahead. If the creditors found at the end of a year that a corporation had lost money, how long would it be before the credit of that corporation would be lost; how long before the banks would refuse to renew or to discount its paper; how long before the creditors would place their claims in judgment and force the corporation into a receivership or into bankruptcy? Great care should be taken to protect amply the rights of privacy, while at the same time care should be exercised to protect the public by giving out such facts as they, as creditors, stockholders and prospective investors, are entitled to know.

The first concern of the government which grants charters of incorporation ought to be to see that its corporate offsprings are doing a legitimate business and are not violating any of the laws. Its second concern ought to be the giving to the public of all such

information as should affect the reasonable judgment of a man in determining whether he should or should not invest in a particular concern.

These obligations on the part of the government are universally recognized, but the means to be employed to effect these ends are still a matter of keen discussion.

Experience has abundantly proved that it is not practicable to allow corporations to issue their own reports without the existence of a board of inspection to verify the truth of the statements contained therein. Such a plan of reporting, without such inspection and verification, has been tried by the various states, and the result has been that the reports, if not so meagre as to be of no practical value, are of so complex a nature that the majority of persons are incapable of understanding or properly appreciating them.

As a matter of fact, a government board of examiners is absolutely indispensable for the realization of compulsory publicity. With such a board, the affairs of each corporation would become known, and the purchaser of bonds and of stocks could rely upon the corporation bureau to see that corporations are not over-capitalized, and that they are doing business honestly and fairly and within the provisions of law. In this way the corporation, the purchaser of corporate bonds and of stocks and the general public will be protected.

If the so-called "tobacco," "leather," "whiskey," "ice," "sugar," "steel" and "shipbuilding" trusts had been subjected to the ordeal of a thorough investigation by expert accountants and their true financial condition laid before the public, a large number of serious losses would have been prevented from falling upon innocent and worthy people. The fact that industrials as well as railroad and transportation companies are possessed of double attributes, of public and private nature combined, opens the way to abuse of official power. The favored few in the inner confidence of the managers have advantages in the general market to which they are not justly entitled.

The investigation of the refunding committee of the Pacific railroads at Washington brought out the evidence from one of the principal witnesses that the books connected with the construction of the road had been burned or destroyed as useless trash, although they contained the record of transactions involving hun-

dreds of millions of dollars, a record which became absolutely necessary to a fair settlement between the government and its debtors. There was put in evidence the fact that a certain party in interest had testified before another committee that he was present when \$54,000,000 of profits were divided equally among four partners,—himself and three others. None of the books of record containing this valuable information escaped the flames.

The investigation of various railroad corporations has shown that some of the managements have peculiar methods, if not delinquencies, in bookkeeping, which if they had received rigid investigation and the guilty parties had been held responsible for their acts, many of the great railway corporations would not have been wrecked during the panic of 1893-95.

Such annual inspection by a government board of examiners would prevent a repetition of these evils and would ensure the correctness of published reports and prospectuses, and would prove a check on the discriminations which have built up and destroyed so many corporations.

"Under the present industrial conditions," Mr. Garfield, in his report, says, "secrecy and dishonesty in promotion, overcapitalization, unfair discrimination by means of transportation and other rebates, unfair and predatory competition, secrecy of corporate administration and misleading or dishonest financial statements are generally recognized as the principal evils."

These evils would in a large measure disappear if the corporate managers knew that the government by an annual inspection would bring to light all their acts.

The government which gives to a group of citizens a charter of incorporation, a special privilege, an advantage they did not possess as individuals, has the right to know that the privilege is not being used unfairly and illegally. If a corporation is legally organized and is conducting a legitimate business, no injury will be done it by inspection.

*Eighth.* A progressive graded tax should be levied on the actual net profits of corporations chartered by this department above 6 per cent. Such tax might be graded as follows:

1-10 of the 1st per cent. above 6 per cent.  
1-9 of the 2d per cent. above 6 per cent.

- 1-8 of the 3d per cent. above 6 per cent.
- 1-7 of the 4th per cent. above 6 per cent.
- 1-6 of the 5th per cent.. above 6 per cent.
- 1-5 of the 6th per cent. above 6 per cent.
- 1-4 of the 7th per cent. above 6 per cent.
- 1-3 of the 8th per cent. above 6 per cent.
- 1-2 of the 9th per cent. above 6 per cent.
- 6-10 of the 10th per cent. above 6 per cent.
- 7-10 of the 11th per cent. above 6 per cent.
- 8-10 of the 12th per cent. above 6 per cent.
- 9-10 of each per cent. of profits above 18 per cent.

Each corporation is rated according to the profits made. The corporate charter is valued exclusively by the prosperity of the corporation. A tax upon the profits would be governed by actual results and be equal in its effect upon different corporations, and be just in its general operation. Whether or not a corporation had a special privilege, in the nature of a monopoly given by the patent laws, by the tariff, by a special franchise, or by the control of the market, would make no difference in the laying of the tax. If a corporation possessed any of these privileges, it would be obliged to pay for each in proportion to its value, as evidenced by its earning power. A corporation should be permitted to earn a reasonable profit on its assets. If this permission were taken away, all incentive to carry on business would be killed, the affairs of corporations would be wound up, and the people would be compelled to face general disaster, the like of which the world has never known. That the percentage of profits allowed untaxed should be liberal, in view of the risk taken by the investor, no one would question. While four per cent. may be the average value of capital, we would suggest the allowance untaxed of six per cent. of actual net profits on the fair market value of the tangible assets of the corporation, as this percentage would be large enough to stimulate business and not so large as to work injustice between corporations chartered by this bureau and corporations chartered by the various states.

It is reasonable to assume that corporations will make all the profits they dare; and if we place a progressive graded tax upon their profits, their incentive to overcharge and increase their profits beyond a fair amount will be taken away, and their time, thought

and energy will be bestowed in bettering the quality of their products, in extending their markets, and in holding their place in the business world. Franchises, special privileges and tariff protection will not produce the valuable monopolies they are creating to-day, for upon the adoption of this plan of taxation the monopolies will not be allowed to yield the large profits that are now enjoyed. If a corporation has to pay as a tax 9-10 of each per cent. of profits above 18 per cent., it will not risk the losing of its trade for the sake of making so small a percentage of profit, and the people will get the benefit of a cheaper price and a better article.

*Ninth.* In determining the actual net profits earned by a corporation, the board of examiners should annually ascertain the fair market value of the tangible assets of the corporation, not taking into consideration the franchises, the capital stock, or its bonds.

This value may be obtained by an examination of the officers of the corporation, by inspection of its books, and by expert testimony. The board should deduct from the total earnings of the corporation the necessary and reasonable expenses of its management, including the actual amounts spent in renewing the plant, the cost of materials purchased and used, and, in order to avoid double taxation, the taxes paid on its property to all municipalities. Having obtained these amounts, the board should by ordinary business methods figure the percentage of profits earned in relation to its corporate assets.

*Tenth.* The cost of running the corporation bureau should be met in two ways:

(a) By the incorporation tax.

(b) By charging the various corporations examined an amount sufficient to pay the salaries and the expenses of the corporate examiners. The amount charged would only be about ten dollars a day for the time spent by the examiner in investigating the affairs of a corporation.

If the bureau was conducted on economical lines, a surplus ought to be obtained from the organization tax to go into the general fund; while the amount collected as a tax on profits could go to reduce the general expenses of the government.

*Eleventh.* Finally, the question may be asked whether the corporation bureau, or some commission or interstate court should be

given power to review and order changes in rates and to investigate and punish the giving of rebates by railroads?

The annual simultaneous inspection of railroads, and of industrial corporations proposed in the foregoing plan will discover whether railroads are giving rebates and whether they are discriminating between shippers in the matter of freight rates. The present laws on the statute books provide penalties of sufficient severity for the giving of rebates and for discriminations. Their ineffectiveness is due very largely to the inability of the government to obtain the facts upon which a judgment for conviction can be obtained. While the examination of the books of the common carriers alone might not secure the evidence required, the simultaneous examination of the affairs of transportation companies and of shipping corporations would undoubtedly bring to light all violations of the anti-rebate and discriminatory laws. No additional legislation appears to be needed if this proposed inspection is adopted.

The railroads, by governmental inspection, being freed from the pressure compelling the giving of rebates, will, for the first time, be enabled to compete with each other on equal terms. Competition will then be free and the railroad giving the best service or charging the lowest freight rates will get the business. The graded tax on profits above six per cent. will take away the desire to obtain large temporary profits at the risk of losing traffic by competing roads extending their lines to enter into direct competition.

With profits taxed so heavily and competition being on terms of absolute equality, the railroads would be compelled for their own protection to keep their rates reasonable and to give good service to the public. If this plan of inspection and taxation did not furnish the relief contemplated, the changed conditions resulting therefrom would undoubtedly suggest a remedy, possibly not so drastic as the remedies suggested to-day. Our democratic American government should not be permitted to step in and run the business of individuals by fixing the rates to be charged, whether such business be in its nature private, quasi-public or public, except as a last resort for the protection of the people when all other feasible plans have failed to provide the proper checks and needful remedies.